IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

DIANA VAZQUEZ VALENTIN, et al., Plaintiffs vs. VICTOR J. SANTIAGO DIAZ, et al., Defendants	Civil No. 01-1788 (JP)

FINAL JUDGMENT

_____ Pursuant to the Judgment of the First Circuit Court of Appeals entered on September 22, 2004 **(docket No. 113)** and the Mandate [18] of said Court **(docket No. 114)**, the Court hereby **ENTERS JUDGMENT** for Defendants.

This judgment is entered without the imposition of costs.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 27th day of January, 2005.

S/Jaime Pieras, Jr.
JAIME PIERAS, JR.
U.S. SENIOR DISTRICT COURT

[1] *"This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel. Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is vacated, and the district court is ordered to enter judgment for the defendants. The parties shall bear their own costs."*

(2)

No. 04-1322

Supreme Court, U.S.
FILED
JUL 27 2005
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In The

Supreme Court of the United States

DIANA VAZQUEZ-VALENTIN,

Petitioner,

v.

VÍCTOR J. SANTIAGO-DIAZ, Individually and as Mayor of Toa Baja, Puerto Rico, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Whether the First Circuit Court of Appeals' entry of judgment as a matter of law in favor of respondents was in contravention of this Court's decision in *Cone v. West Virginia Pulp & Paper Co.*, 330 U.S. 212 (1947), and subsequent decisions of this Honorable Court interpreting Fed. R. Civ. P. 50(b), given that Defendants did not renew their motion for entry of judgment as a matter of law after the jury had rendered a verdict in favor of petitioners.

LIST OF PARTIES AND CORPORATE DISCLOSURE

The petitioner accurately lists the parties to the proceedings. No disclosure need be provided under Rule 29.6, because all of the parties are individual citizens.

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BRIEF IN OPPOSITION

Respondents Victor J. Santiago-Díaz, the former Mayor of Toa Baja, Puerto Rico, and Milagros Delgado-Ortiz, the Human Resources Director of the Municipality of Toa Baja, hereby oppose the petition for writ of *certiorari*, which seeks review of the First Circuit Court's decision of September 22, 2004 and Order denying petition for rehearing and suggestion for rehearing en banc entered November 17, 2004.

COUNTER-STATEMENT OF THE CASE

A. Introduction

Further review of the **First** Circuit's decision in this case is unwarranted. First, Petitioner has failed to set forth compelling reasons in order for this Court to exercise its judicial discretion and review on a writ of *certiorari* pursuant to Rule 10 of the Supreme Court of the United States. **Second**, at least one other Court of Appeals have adopted the same rule underlying the precedent followed by the Court of Appeals for the First Circuit in this case, pursuant to which it retains the authority to assess the sufficiency of the evidence even when a party has failed to make a proper motion below with the intention of preventing "manifest injustice" in cases where the record reflects absolute dearth of evidence to support the jury's verdict.[1] **Third**, Petitioners waived their waiver argument, by failing to contend on appeal that Defendants had forfeited

[1] *Udemba v. Nicoli*, 237 F.3d 8, 13 (1st Cir. 2001) (quoting *Faigin v. Kelly*, 184 F.3d 67, 76 (1st Cir. 1999)); *see also Pachuta v. Massey-Ferguson, Inc.*, 170 F.3d 125 (2nd Cir. 1999).

their sufficiency of the evidence issue by failing to renew their motion for judgment as a matter of law after the verdict. **Fourth**, and finally, the Rule 50(b) procedures should be equitably modified, because the District Court's issuance of its May 14, 2002 *Opinion and Order* effectively constituted a premature denial of Defendants' Rule 50(b) motion, rendering their arguments with respect to a judgment as a matter of law effectively moot, and making it futile to file such a motion.

B. Background

Respondents were defendants in this political discrimination case. During the trial, they twice moved for judgment as a matter of law pursuant to Fed. R. Civ. P. 50 (a), once after the plaintiff-petitioner had rested her case, and again after they had rested. Both motions were denied, and the case went to the jury, which returned a verdict for the plaintiff on May 14, 2002. On that same day, judgment was entered for the plaintiff, whereupon the defendants stated to the District Court that they intended to file a Rule 50(b) motion within the ten-day time limit.

Two days later, on May 16, 2002, the defendants were given notice that on the same day that they had informed that they were going to file their Rule 50(b) motion, the District Court had signed an *Opinion and Order* denying defendants' motion for qualified immunity. (Docket No. 76). In its order, the court ruled that, because the jury found for the plaintiff and awarded her punitive damages, this necessarily implied that the jury found defendants Victor Santiago and Milagros Delgado to have been "motivated by evil motive or intent, or [that their conduct] involved a reckless or callous indifference to Plaintiff's

federally protected rights." The court thus determined that the individual defendants were not, as a matter of law, entitled to qualified immunity and, consequently, that the punitive damages award was warranted. (Docket No. 76, Conclusions of Law Nos. 4 and 5).

The issuance of the *Opinion and Order* in such a short period of time after the verdict took defendants by surprise. The court's unreserved acceptance of the jury's verdict, and its reliance on the same to sustain the denial of qualified immunity and the award of punitive damages before the defendants had even had the opportunity to present their arguments in support of their Rule 50(b) motion, was taken as a premature denial of defendants' arguments for judgment as a matter of law. Defendants considered that the *Opinion and Order* effectively foreclosed any possibility of consideration of a Rule 50(b) motion, and, considering it futile to file, elected not to do so.

Defendants did, however, file a Rule 59 motion requesting the court to set aside the compensatory and punitive damages awards. (Docket No. 84). The plaintiff filed an opposition in which, significantly, she contended that defendants' motion was in reality a motion requesting judgment as a matter of law. (Docket No. 85).[2] Indeed, in her opposition, the plaintiff fully argued in favor of the sufficiency of the evidence to support the jury verdict for, both, compensatory and punitive damages. (Docket No. 85). She also filed a Motion for Reinstatement of Plaintiff

[2] The District Court acknowledged the fact that Plaintiff viewed Defendants' Rule 59 Motion as a motion for judgment notwithstanding the verdict. (Docket No. 99, Pt. III – Plaintiff's Arguments, *Opinion and Order* of May 5, 2003).

to her position of Executive Director II (Docket Nos. 80, 87), and Defendants timely opposed to the same (Docket Nos. 82 and 88). Roughly one year later, on May 5, 2003, the District Court issued an *Opinion and Order* denying Defendants' Rule 59 motion, as well as granting Plaintiff's motion for reinstatement. (Docket No. 99).

On June 3, 2003, Defendants filed their Notice of Appeal. (Docket No. 107). In their brief, Defendants-Appellants argued, first, whether Plaintiff's evidence of political discrimination was insufficient to establish a prima facie case of political discrimination; second, whether the district court erred by excluding certain documentary evidence that was crucial to Defendants' defense; third, whether the trial judge's prejudicial remarks and conduct before the jury tainted the verdict to the point of warranting a new trial; fourth, whether the District Court abused its discretion by ordering the reinstatement of Plaintiff; and fifth, whether the District Court erred in denying the Defendants' qualified immunity defense.

On September 22, 2004, the United States Court of Appeals for the First Circuit issued an opinion in which it invoked its authority to assess the sufficiency of the evidence in the present case on appeal pursuant to *Udemba v. Nicoli*, 237 F.3d 8, 13 (1st Cir. 2001), and ruled that Plaintiff had failed "to adduce sufficient evidence for a jury to reasonably infer that Plaintiff's political affiliation was a substantial or motivating factor in an adverse employment action, [thus vacating the judgment and ordering] the entry of judgment for defendants." *See Vázquez-Valentín v. Santiago-Díaz*, 385 F.3d 23, 40 (1st Cir. 2004). Plaintiff-Appellee filed a Petition for Rehearing and Suggestion for Rehearing en banc, which the Court of

Appeals denied on November 17, 2004.[3] Plaintiff then filed her present petition.

C. Deficiencies in Petitioner's Statement of Facts

In her statement of the facts of the case, Plaintiff fails to disclose in full detail the procedural aspects that distinguish this case from *Cone* and its progeny. The argument presented in relation to those procedural facts will demonstrate that this Honorable Court should deny her petition.

1. In the Statement of the Case and description of the ruling of the Court of Appeals, the Petitioner fails to fully disclose and clarify the precise bases for the Court of Appeals authority to asses the sufficiency of the evidence. Above and beyond its citation to precedents such as *Udemba* in order to assess the sufficiency of the evidence, the Court of Appeals took into consideration the fact that "plaintiff has failed to allege defendants' forfeiture of the sufficiency of the evidence issue." *Vázquez-Valentín*, 385 F.3d at 29 n.8 (1st Cir. 2004). Nowhere in her brief to the Court of Appeals did she mention that Defendants had failed to renew their motion for judgment as a matter of law after the jury verdict, therefore failing to preserve that argument in the last court prior to Supreme Court review. During her oral argument before the First Circuit, moreover, Petitioner again failed to make any reference to the issue of the Defendants' failure to file a renewed post-verdict motion for judgment as a matter of law. Plaintiff waived waiver.

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[3] *See* Appendix B of Petition for Writ of *Certiorari*.